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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,103	02/22/2002	Marie-Laure Souvie	71247-0003	1683

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EXAMINER

COLE, MONIQUE T

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,103

Applicant(s)

SOUVIE ET AL.

Examiner

Monique T. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 56 and 57 is/are allowed.
- 6) ☒ Claim(s) 24-31, 33, 37-40, 43-46, 48-51 and 53-55 is/are rejected.
- 7) ☒ Claim(s) 30, 32, 34-36, 41, 42, 47 and 52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 28, 29, 31, 37, 38, 39, 40, 50 and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 28, 29 and 31 are rendered indefinite because the polyacid ester components is claimed to be esterified with an alcohol. However, alcohol is excluded by the instant claims, so it is unclear how this esterification is not violative of the claim requirements. Further clarification is required.

Claims 37 & 38 are rendered indefinite because the claims recite that the polyacid ester represent 0.1-30% of the hydrofluoroether component. Should this be that the polyacid ester represent 0.1-30% of the total composition, instead? Further clarification is required.

Claims 39, 40, 50 and 51 are rendered indefinite because it is unclear whether Applicant intends for a selection between the recited complementary components, as in a Markush grouping, or whether the claim requires both components. Moreover, in claims 40 and 51, it is unclear whether Applicant is reciting the phthalate component as being an additional independent component or whether it is present as the component that

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improves the properties of the perfume component, promoting persistence of the composition to the skin. Further clarification is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 24, 25, 26, 27, 33, 43, 44, 45, 46, 48, 49, 53, 54 & 55 are rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,573,235 to Surbled et al. (herein referred to as "Surbled").

Surbled teaches an ethanol-free composition comprising a hydrofluoroether selected from the group consisting of methoxynonfluorobutane, ethoxynonafluorobutane and propoxyundecafluoropentane, water as a cosolvent and essential oil of sweet orange (citric acid ester). See col. 2, lines 28-41. The compositions made from the aforementioned components are essentially clear (col. 1, lines 63-65; col. 5, Example 8). The hydrofluoroether component is taught to be used in an amount of about 90% and the perfume portion in an amount of about 10%. See Examples.

Allowable Subject Matter

3. Claims 30, 32, 34, 35, 36, 41, 42, 47 and 52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claims 56 and 57 allowed.
5. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or suggest the particular polyacids required by the objected to claims. The prior art does not teach or suggest the addition of the silicone in the claimed composition. The prior art does not teach or suggest that the claimed composition is formulated as a body lotion. The prior art does not teach or suggest an UV, antioxidant or dye being added to the composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 571-272-1255. The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Monique T. Cole
Examiner
Art Unit 1743

MC